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Attorney for Robert Rasheed

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

UNITED STATES OF AMERICA,)	No. CR-14-0582-PJH
)	
Plaintiff,)	JOINT DEFENSE MOTION <i>IN LIMINE</i> TO
)	EXCLUDE GOVERNMENT RULE 404(b)
Vs.)	EVIDENCE AT TRIAL
)	
ALVIN FLORIDA, et al.,)	Pretrial Date: October 12, 2106
)	
Defendants.)	Time: 1: 30 p.m.
)	
)	Honorable Phyllis J. Hamilton
)	
)	Criminal Local Rule 17.1-1(b)(15)
)	
)	
)	
)	

The defendants, by and through their counsel, jointly submit this JOINT DEFENSE MOTION *IN LIMINE* TO EXCLUDE GOVERNMENT RULE 404(b) EVIDENCE AT TRIAL.

STATEMENT OF FACTS & LAW

The core of this case is a single conspiracy alleging a complex criminal antitrust violation.

1 The alleged criminal conduct involves a lengthy conspiracy to rig bids at public non-judicial
2 auctions for hundreds of distressed properties in Alameda County.

3 In accordance with Rule 404(b), the defense requested that the government provide notice of
4 its intent to introduce this type of evidence at trial. For example, on January 28, 2015, by email
5 and United States Mail, defense counsel for Robert Rasheed requested that the prosecution
6 provide notice of any 404(b) evidence it intended for trial. *See January 28, 2015 letter attached*
7 *as Exhibit A.* Notwithstanding this defense request, no notice of 404(b) evidence has been
8 provided by the prosecution beyond its March 16, 2015 letter stating that it would inform all
9 defendants of Rule 404(b) trial evidence some “reasonable” time before trial. *See March 15,*
10 *2015 Government letter attached as Exhibit B.*

11
12 Subsequently, in the numerous government discovery letters which accompanied the
13 voluminous discovery CDs in this case, no mention, identification or notice of any Rule 404(b)
14 evidence was ever provided. Consequently, in light of the above, the defense jointly seeks this
15 Court’s Order excluding Rule 404(b) evidence by the prosecution as to any defendant at trial.

16
17 A. The Prosecution Has Failed to Produce Requested Evidence to the Defense

18 Federal Rule of Evidence Rule 404(b)(2) Notice in A Criminal Case states:

19 **This evidence may be admissible for other purposes, such as proving motive, opportunity,**
20 **intent, preparation, plan, knowledge, identity, absence of mistake or accident. On request**
21 **by a defendant in a criminal case, *the prosecutor must***

22 (A) ***provide reasonable notice of the general nature of any such evidence that the***
23 ***prosecutor intends to offer at trial (emphasis added).***

24 The Federal Rules of Evidence plainly require that the government must provide reasonable
25
26

1 notice or be foreclosed of “other crimes, wrongs or other acts” evidence it intends to introduce at
2 trial. See Fed.R.Evid. 404(b)(2)(A). The Rule’s clear intent of the pretrial notice requirement is
3 to reduce surprise and promote early resolution on the issue of admissibility. The defense, as
4 seen in Robert Rasheed’s letter has been requesting disclosure of this specific evidence since
5 January 28, 2015. Nothing identified as Rule 404(b) has been forthcoming either in response to
6 the defense requests or in the government’s stream of discovery letters and CDs.

7 To avoid any unfair surprise at trial, to ensure that the government adheres to the Rules
8 and to promote orderly due process, the defense requests that the Court order any Rule 404(b)
9 evidence inadmissible at trial.
10

11 Dated: September 14, 2016

Respectfully Submitted,

12 _____/s/_____
13 SHAFFY MOEEL
14 Attorney for Defendant
ALVIN FLORIDA, JR.

15 _____/s/_____
16 STEVEN GRUEL
17 Attorney for Defendant
ROBERT ALHASHASH RASHEED

18 _____/s/_____
19 JOHN FORSYTH
20 Attorney for Defendant
JOHN LEE BERRY, III

21 _____/s/_____
22 EDWIN PRATHER
23 Attorney for Defendant
REFUGIO DIAZ

24 _____/s/_____
25 DARRYL STALLWORTH
26 Attorney for Defendant
STEPHAN ALEXANDER FLORIDA